IX. It is also insisted that the treatment she received was justified by her bad language and improper behavior. The law, as to the authority of defendant and its officers to enforce rules requiring proper deportment, is sufficiently stated in the instructions. Whether her treatment resulted from the enforcement of such rules or of others aimed at her exclusion on account of color, were questions for the jury and were left to them by the instructions. There is no just ground of complaint with their findings thereon.

X. Certain instructions were asked by defendant and refused, to the effect that the dinner-ticket having been procured by plaintiff through deception and without the knowledge of the officers of the boat, entitled her to no rights other than those given by the transportation-ticket. It does not appear that the rules and custom of the boat required tickets to be purchased in person by the individuals using them, or that a ticket not thus obtained conferred no rights upon the party acquiring it. Having obtained the ticket in a manner not forbidden by the regulations of the boat or by law, she was entitled thereby to all the rights which it would have conferred upon a white person if obtained in the same way.

The foregoing discussion disposes of all the objections made by defendants' counsel to the rulings of the District Court. In our opinion they are correct; the judgment is therefore affirmed.

Court of Errors and Appeals of Delaware.

PHILADELPHIA, WILMINGTON AND BALTIMORE RAILROAD COMPANY *v.* BOWER.

It is settled law that charters of corporations, other than municipal, although the objects of the corporation may be *quasi* public, are contracts within the protection of the Federal constitution.

Any act having the effect to abridge or restrict any power or privilege vested by the charter, which is material to the beneficial exercise of the franchise granted, and which must be supposed to have entered into the consideration for the acceptance of the charter by the corporators, is an impairing of the obligation of the contract within the prohibition of the Constitution.

An act prohibiting a railroad company from charging at a greater rate per mile for carriage of passengers or freight from place to place within a state, than for similar carriage through or beyond the state, no such power to regulate charges having been reserved in the charter, is unconstitutional and void.

Such an act is not within the police power of the state. The legislature may regulate the exercise of the corporate franchise by general laws passed in good

faith for the legitimate ends of the police power, that is for the peace, good order, health, comfort and welfare of society, but it cannot under color of such laws destroy or impair the franchise itself, nor any of those rights or powers which are essential to its beneficial exercise.

THIS was an action at law by the appellee Bowers, to recover the sum of $56.80 as a penalty for overcharge by the appellant, for carrying freight from Newport to Wilmington, two places within the state of Delaware, at a greater rate per mile than the appellant had charged for similar services between Port Deposit in Maryland, and Wilmington in Delaware.

An Act of the General Assembly of Delaware, passed April 11th 1873, is in these words:—

"SECT. 4. That if the said Philadelphia, Wilmington and Baltimore Railroad Company, or any other railroad company in this state, shall, either as the operator of its own railroad or railroads, or as lessee of other railroads within the state, charge and receive a greater rate per mile for the carriage of passengers (except so far as the same may be increased to the amount of the tax annually paid under the provisions of Chapter 458, Volume 12 of the Laws of Delaware) or for the carriage or transportation of goods, wares or merchandise or other property whatsoever, from place to place within the state, or from a place within the state to a place without the state, than is charged by such company for the carriage of passengers and the transportation of property or freight for like distances, or per mile, from places without the state to places within the state, or from places within the state through the state to other places without the state, the person or persons paying such charges, either as fare or freight, shall be entitled to recover from such company so charging and receiving the same, a sum of ten-fold the amount of the money so paid, to be recovered in an action of debt or *assumpsit*, as like amounts are now recovered by law."

The plaintiff recovered in the court below, subject to questions reserved for the opinion of this court.

Geo. H. Bates and *Lore*, Attorney-General, for the plaintiff below.

Jos. P. Comegys and *Geo. C. Gordon*, for the appellant.

The opinion of the court was delivered by

BATES, Chancellor.—Several objections to this statute were made at the bar. The objection which in the judgment of the court is decisive, and upon which alone its opinion will be given, is that which treats the act as within the clause of the Constitution of the United States, which declares that no state shall pass any "law impairing the obligation of contracts."—Art I., sec. 10.

A wide range of argument was taken, but among all the questions discussed two only are material. These are, (1) Is the charter of the Philadelphia, Wilmington and Baltimore Railroad Company a contract in the sense of the constitutional provision? and (2) If it be such, then does the act impair its obligation?

Both these questions are answered by rules for the construction of this provision of the Constitution long since established by the Supreme Court of the United States—the tribunal which is the ultimate and only authoritative expounder of the Federal Constitution.

In the first place, then, since the decision of the celebrated *Dartmouth College Case*, in 1819, 4 Wheat. 518, it has ceased to be a point for discussion that a corporate charter is a contract within the prohibitory clause referred to; and further, that a charter is none the less protected against legislative interference, although the franchise granted be one in the exercise of which the public are interested, if, nevertheless, the corporation itself be a private one. For, the uses of a corporation may in a certain sense be public, and yet the corporation, with its franchises and property, be private,—as much so as if such franchises and property were vested in a single person instead of in a company; and nothing can be clearer than that franchises and property which in their nature are private must be equally inviolate whether vested in a corporation or in an individual. To this class of *private corporations for public uses* belong a large number, such as colleges, banks, insurance, turnpike companies, &c. A broadly marked distinction is taken in the *Dartmouth College Case* between these quasi-public corporations and those of a more limited class which are strictly public corporations. The latter might be more properly distinguished as civil or municipal corporations. These are created by the legislature solely for purposes of local government, such as are incorporated cities, towns or counties. They are depositaries of a portion of the political power of the state, which they exercise not as a private franchise but as a public trust,—as the mere agents or trustees of the legislature, subject to its supervision and control. Such a charter is not in any proper sense a contract *inter partes*, within the prohibitory clause of the Constitution. It is therefore revocable, and is subject to alteration at the pleasure of the legislature, saving any private rights and interests which may have previously become

vested under the action of the corporate body. But charters creating what may be termed business corporations possess all the ingredients of contracts. First, there are *parties*, whose concurrent action is essential to give them force and effect, the government proffering and the corporations accepting the franchise, with such privileges and conditions as the legislature may see fit to attach to it. There are also *mutual obligations* impliedly assumed by the parties,—the government becoming bound, on the one hand, for the secure enjoyment by the grantees of the corporate franchise, according to the terms and conditions of the charter, and the corporators, on the other hand, undertaking, in consideration of the privileges bestowed, to exercise them faithfully for the purposes contemplated in the grant of them. Further, the business conducted under such charters, quite as much as like enterprises set on foot by persons unincorporated, is provided for by private capital invested by the corporators for their individual profit, and *the property held and employed by the corporation belongs to the corporators.* The state takes no part in the outlay or profits of the enterprise, and holds no interest whatever in the corporate property or effects, except in some special instances in which the state becomes a stockholder. The corporate franchise itself, although created by the legislature, becomes when vested by due acts of acceptance a species of private property, and is recognised and protected at common law as fully as any other kind of property. The interest which the public have in the objects and operations of these business corporations is purely incidental, and in no degree detracts from the private nature of the corporation and of its franchises.

The Supreme Court in the *Dartmouth College Case*, in its most elaborate examination of this subject, found that at common law charters of incorporation had always been recognised and treated as contracts between the crown and the grantees; that it was not competent, even for royal prerogative, without the consent of the corporation, to alter or abridge them; that they could be revoked only in the case of a forfeiture for negligence or abuse of the franchise, judicially ascertained. The court, therefore, considered that charters were strictly and technically within the language of the Constitution, since that instrument must be presumed to have employed the term "contract" according to its settled usage at common law. And this construction the court found to be supported

by all the considerations of policy which led to the adoption of the prohibitory clause; since for no species of legal rights could the protection of the clause be more important than for those created by charters, whether we consider the heavy outlays of capital often made under them, the value of the property acquired, or the public interests not unfrequently involved in their objects and operations. So clearly did the Supreme Court consider all charters (other than such as are strictly public or municipal) to be within the prohibitory clause, that in the case cited they extended the protection of the clause to a charter which was granted, not for private gain or profit, nor for any of the ordinary purposes of trade or business, but purely for a public charity, *i. e.* for the christianizing of Indians and the education of youth. For the court considered that the corporate franchise, *for whatever object it might have been granted*, together with the right to exercise it according to the terms and conditions of the charter, *was itself*, when once vested, a legal right, and as such was as well entitled to the protection of the Constitution and laws as were any of the more tangible species of private property, for the acquiring or holding of which corporations are ordinarily created.

It need only be further remarked on this point that our Court of Errors and Appeals has already accepted the ruling of the *Dartmouth College Case* as the law of this state, and as it happens, has applied it to the protection of the very corporation now before us. In *Bailey* v. *The Philadelphia, Wilmington and Baltimore Railroad Co.*, 4 Harr. 389, the charter of this company was held to be a contract within the prohibitory clause of the Federal Constitution and an Act of the Legislature abridging certain corporate privileges under it was on that ground held to be invalid.

We may next proceed to inquire whether the Act of the General Assembly under consideration impairs the obligation of the contract contained in the charter of the railroad company. And to this question also the *Dartmouth College Case* will be found to afford a clear and conclusive answer.

The sense of the phrase "impairing the obligation of a contract" and the precise effect of the constitutional prohibition, will vary somewhat according to the subject-matter to which it is applied. In the case of contracts wholly *executory*, which were doubtless those directly contemplated by the Constitution, the operation of

the clause would be to prohibit any law discharging or releasing a party to the contract from the stipulations undertaken to be performed on his part, or modifying such stipulations. It is thus that a state insolvent law which undertakes to discharge a debt contracted prior to its passage comes in conflict with the constitutional provision. Where the contract is an *executed* one, as is a grant, the obligation of it is held to be impaired by a law operating to divest any right or estate which has passed or become vested under the grant. Such was the construction of the phrase under consideration in the celebrated case of *Fletcher* v. *Peck*, 6 Cranch 87, in which an act of a state legislature, undertaking to re-assume rights which had vested under a grant made by a prior legislature, was held to impair the obligation of the contract implied in the grant. The *Dartmouth College Case* was the first in which this phrase "impairing the obligation of a contract" received a direct judicial construction as applied to a corporate charter. Such a charter would seem to be quite clearly within the principle of *Fletcher* v. *Peck*. For, treating a charter simply as a grant or *executed* contract, the franchise, which is the subject-matter of the grant, must be as clearly protected by the Constitution against any revocation or abridgment of it, as is a title to land which may be the subject of a legislative grant. But a charter is a contract both executed and executory; and viewing it in the latter aspect, the court in the *Dartmouth College Case* held that in the grant of a charter there is an implied contract on the part of the government that the corporators having accepted the franchise, shall, so long as they exercise their corporate powers faithfully, in accordance with the ends and purposes of their incorporation, enjoy the franchise as fully and beneficially as it is granted, without abridgment or alteration. Hence the court deduced, as the principle of its decision, that a law *altering the charter in any of its material provisions*, without the consent of the corporation, impaired the obligation of the contract. Now, what will or will not amount to such a material alteration of the charter as to bring a law into conflict with the constitutional prohibition it may not be easy to define, but it is sufficient and quite safe to say that an act having the effect to abridge or restrict any power or privilege vested by the charter which is material to the beneficial exercise of the franchise granted, and which must be supposed to have entered into the consideration which induced the corporators to accept the

charter and to assume the duties imposed by it, is such an alteration as the constitutional provision forbids, and that any act so operating is invalid.

Let us apply this principle to the case in hand. The object and effect of the law under consideration is to regulate, and so far to restrict, the power of the railroad company to charge for the transportation of passengers and freight. Of such a power it is hardly enough to say that it is one of value and importance to the company; it is one essential to the enjoyment of the franchise, and must be presumed to have been the consideration for which the corporators accepted the charter, invested their money, and assumed the obligations imposed upon them. It was undoubtedly competent for the legislature, by a provision in the charter, to reserve to itself the right to supervise and regulate in the future this power of the company; but, upon a careful examination of the original acts incorporating the several companies now composing the Philadelphia, Wilmington and Baltimore Railroad Company, we are unable to find in them any reservation of such legislative control over these companies as is necessary to sustain the act under consideration. The power to adjust the tariff of charges by its own officers, according to their views of the necessities of business and of justice to the public, without supervision, was a part of the franchise as it was granted. The attempted regulation by the legislature of this power materially abridges the beneficial exercise of it by the corporation, and without any doubt impairs the obligation of the contract in the sense of the Constitution as interpreted by the *Dartmouth College Case*. The question is not admissible *in what degree* the power of the company to charge is restricted by the statute, or whether the regulation enacted by it is or is not a reasonable or proper one. The principle is that *any material modification of the charter, or of the franchise or powers granted under it, is prohibited by the Constitution.* In the *Dartmouth College Case* the amendment of the charter by the Legislature of New Hampshire appears to have been made in good faith, with a view to enlarge the sphere and increase the usefulness of that institution. What was before a college only was by the act converted into a university; the original board of trustees was increased in number, and the general administration of the institution by the trustees was made subject to the supervision of a Board of Overseers, who were to be appointed by the Governor

and Council, and who thus directly represented the state. Says Chief Justice MARSHALL, in his opinion, after detailing these changes: "This may be for the advantage of this college in particular, and may be for the advantage of literature in general, but it is not according to the will of the donors, and is subversive of that contract on the faith of which their property was given." Mr. Justice WASHINGTON, also, speaking to the same point, says: "In *all respects* in which the contract has been altered without the assent of the corporation its obligations have been impaired, and the degree can make no difference in the construction of the above provision of the Constitution."

It may be worth while to notice here, that the operation of the statute of New Hampshire upon the charter of Dartmouth College, was essentially similar to the effect of the Act of our General Assembly now under consideration. The governing power of the college was by the original charter vested exclusively and without restriction in the trustees therein appointed and their successors. By the amendment to the charter this power was subjected to the supervising control of the state through a board of overseers to be appointed by its officers, the Governor and Council; and thus what had been under the charter an absolute power of administration in the corporators was brought under the regulation of the state. This modification was strongly commented on by the Chief Justice as the feature of the New Hampshire statute which was most clearly repugnant to the constitutional prohibition. Precisely such is the effect of the act before us. It assumes for the state the right to regulate what under the charter was granted as an absolute discretion in this corporation, viz., the right to adjust its tariff of charges for the carriage of passengers and freight.

We have attentively considered the arguments urged with much ingenuity and force by the learned counsel who maintained the validity of this act. Among them the argument of greatest force, and the one most relied on, was an effort to bring the act within the scope of those legislative powers which are so essential to good government and the social welfare that they are treated as inalienable; so that one legislature cannot, even by contract, abridge the full control of a succeeding legislature over the same subject-matter. Such, for example, is the right of the Government at all times to provide for the common defence, to take private property for the public use, to raise revenue, and what is

termed the police power of the state. It was the last of these inalienable powers, viz., that of internal police regulation, to which the act before us was in the argument sought to be referred. The importance of the question here raised requires and has received our serious consideration.

The police power of the state comprehends all those general laws of internal regulation which are necessary to secure the peace, good order, health and comfort of society. We are now concerned, not so much to discuss this power at large as to ascertain, with sufficient precision for the case before us, what is the proper limit of the state police power in its bearing upon chartered rights and privileges, as these are protected by the Constitution of the United States. It is not difficult to ascertain a rule sufficiently definite to be readily applied to cases, and one securing all interests involved —saving to the state, on the one hand, all needful authority for the legitimate purposes of police regulation, and yet, on the other hand, not trenching upon the constitutional protection of chartered rights. Such a rule would seem to be this: that the legislature may at all times regulate the exercise of the corporate franchise by general laws passed in good faith for the legitimate ends contemplated by the state police power—that is, for the peace, good order, health, comfort and welfare of society—but that it cannot, under color of such laws, destroy or impair the franchise itself nor any of those rights or powers which are essential to its beneficial exercise. Thus, acts regulating the mode of carriage of passengers with a view to their safety, or regulating the speed of travel through towns or cities, or prescribing certain precautions for the public safety at crossings, or requiring the erection of fences, &c., &c., are proper exercises of the power of police regulation. Such acts leave the franchise unimpaired and simply regulate the exercise of it in some particulars plainly essential to the general safety, health or comfort of society. But quite different are acts which directly touch the constitution of the corporation, or abridge or modify any of those corporate powers which are essential to the very ends of its creation; such powers, for example, as the right to operate a railroad at all, the right to take tolls, or fares and freights, or to adjust their tariff of such charges. These are not police regulations, but are in substance and effect amendments of the charter; and it is most obvious that if, under color of the police power, corporations may be thus dealt with, the constitutional

provision, so solemnly adjudged by the Supreme Court to be a protection to their rights, is, after all, as to them, wholly nugatory.

This view of the limit of the police power, as exercised over corporations, was taken by the Supreme Court of Vermont in *Thorpe* v. *The Rutland and Burlington Railway*, 27 Vt. 140, cited fully in Redfield on Railways, ch. 31, sec. 2, note 1. That case drew into question the right of the legislature to require existing railway companies to respond in damages for cattle killed or injured by their trains until they should erect suitable cattle guards at farm crossings. The court, in the course of an elaborate discussion by Chief Justice REDFIELD of the general liability of corporations to legislative control, say: "It must be conceded that all which goes to the constitution of the corporation and its beneficial operation is granted by the legislature, and cannot be revoked, either directly or indirectly, without a violation of the grant, which is regarded as impairing the contract, and so prohibited by the United States Constitution." Again, they say, "the privilege of operating the road, or taking tolls or freight and fare, is the essential franchise conferred. Any act essentially paralyzing this franchise, or destroying the profit therefrom arising, would no doubt be void. But beyond that the entire power of legislative control resides in the legislature," &c. And the court proceeded to sustain the act before them, requiring the erection of cattle-guards, as an act of police regulation only, such as did not impair the franchise or any of its essential rights or powers. In a late treatise on the subject of Constitutional Limitations by Judge COOLEY, p. 577, upon an extended and very satisfactory examination of the point now before us, substantially the same limitation is drawn to the exercise of the police power as affecting chartered rights. The requisites to the valid exercise of the police power the author holds to be these: "The regulations must have reference to the comfort, safety or welfare of society; they must not be in conflict with any of the provisions of the charter; and they must not, under pretence of regulation, take from the corporation any of the essential rights and privileges which the charter confers. In short, *they must be police regulations in fact, and not amendments of the charter, in curtailment of the corporate franchise.* The maxim, *sic utere tuo ut alienum non lædas*, is that which lies at the foundation of the power, and to whatever enactment affecting the management and business of private corpora-

tions it cannot fairly be applied, the power itself will not extend. It has accordingly been held that where a corporation was chartered with the right to take toll from passengers over their road, a subsequent statute authorizing a certain class of persons to go toll free was void: *Pingrey* v. *Washburne*, 1 Aiken 268. This was not a regulation of existing rights, but it took from the corporation that which they before possessed, namely, the right to tolls, and conferred upon individuals that which before they had not, namely, the privilege to pass over the road free of toll."

The Attorney-General, who appeared on behalf of the state, put in the strongest possible form the argument in support of this act as an exercise of internal regulation, by insisting that there must at all times inhere in the legislature an authority to protect the public against extortionate charges and unjust discriminations by carriers exercising a public employment, and that to this power railroad corporations, as well as other common carriers, must be held amenable. That the legislature possesses the general power here claimed for it is not doubted; but the real question still remains, viz.: in what mode may such power be constitutionally exercised,—at least over corporations? The answer is, that the legislature may by general laws forbid extortion and unjust discriminations on the part of common carriers, as it may prohibit any other offence against social order or the general welfare. It was not disputed in the argument, that for the breach of such laws, corporations as well as natural persons may be held liable; but such liability would be enforced by a judicial proceeding, in which the alleged extortionate or unjustly discriminating character of the charges drawn into the question would be judicially ascertained. Such remedies against common carriers already exist at the common law, and to these, as well as to the common-law liabilities of common carriers generally, incorporated carriers as well as natural persons are subject by the public nature of their employment. Very different, however, from such a mode of regulation by general laws, with a liability to judicial remedies, is the attempt by a legislature to prescribe in advance a tariff of charges for carriers,—to do which is in effect to take out of their hands the management of their own business. This certainly cannot be done in the case of a corporation. How far the legislature can directly regulate charges by common carriers not incorporated is a question not now arising; but the right of a corporation to conduct its own business—to

adjust its tariff of charges (subject to the implied condition that such charges shall not be unreasonable) stands upon a special ground not applicable to an unincorporated carrier. For such might, being a part of the corporate franchise granted by charter, is protected by the Constitution of the United States. And this brings the case back to the view before presented as to the true limitation of the police power over corporations. It is the only view by which both the general power of police regulation by the state over corporations and their due protection under the Constitution can be preserved and kept in harmony.

Enough has been said to show to what conclusion the court is impelled. We are of opinion that, inasmuch as the act under consideration assumes the absolute power to regulate and control the exercise of a corporate right which was granted to this company as a part of its franchise, without any reserved power of such future regulation by the legislature, it is not a legitimate exercise of the state police power, but is in substance and effect an alteration of the charter, and materially impairs the obligation of the contract in the sense of the constitutional prohibition as interpreted by the Supreme Court. The Constitution, so interpreted, is the supreme law of the land, and we have no alternative but to apply it to the case before us. A contrary judgment of this court would be practically an attempt to subvert the Constitution of the United States within this state.

Let a certificate answering the questions reserved be drawn in accordance with this opinion.

The Chief Justice and Associate Justices expressed their concurrence in the opinion delivered by the Chancellor.

The attempt of the statute in question seems to have been to compel the railway companies doing business within the state to charge no higher fare or freight for the traffic within the state than they did for that which passed through the state or out of it upon the same railways. There is one objection against this mode of regulating the fares and freights of railways within the state by those of the same companies without the state which does not seem to have been considered by the court, if, indeed, it were urged by counsel, viz.: that the states have no power to regulate fares and freights taken by their own railways beyond the limits of the state, or for traffic which passes through the state, or across the line of the state, whether going into or out of the state, this matter pertaining exclusively to Congress under the reservation in the United States Constitution for Congress to have the exclusive power "to regulate commerce among the several states." This question we have discussed elsewhere: *Ante*, p. 1. The attempt, therefore, to measure the duty of a railway

company within the state by its duty and practice without the state, would seem to be adopting a measure altogether foreign to the subject; as much so as requiring the companies within the state to conform to the same rules in that respect as foreign railway companies did. There is another fatal objection to the validity of the plaintiff's claim, inasmuch as a portion of the alleged overcharge in both actions was for transportation across the line of the state, which the state legislature had no power to regulate, that belonging exclusively to Congress, under the power of regulating all inter state commerce, so that unquestionably the court might, upon this ground alone, have decided the cases against the plaintiff as they did.

But the ground upon which the decision is placed by the court, seems to us untenable. The doctrine assumed by the court is, that the power to adjust its tariff of charges by its own officers, according to their views of the necessities of business and of justice to the public, without supervision, was a part of the franchise, as it was granted to the company, and "the attempted regulation by the legislature of this power materially abridges the beneficial exercise of it by the corporation, and without any doubt impairs the obligations of the contract in the sense of the Constitution as interpreted by the *Dartmouth College Case.*" The only authorities cited by the court in favor of this somewhat startling proposition are two cases from Vermont, in one of which the legislature, after granting a turnpike company, to be maintained by certain tolls, payable by all persons passing the company's gates with teams or carriages, passed a subsequent act, allowing certain classes of persons to use the road without paying tolls, thus claiming a power which, if conceded, would extend to all persons, and thus destroy the entire franchise, which the court of course held void. There would seem no analogy between a statute depriving the company of all toll and one merely regulating its tolls, and so the same court held in *State* v. *Bosworth*, 13 Vermt. 402. The other case cited was decided in favor of the validity of the statute, as being only a legitimate exercise of legislation, and was supported by such an argument as we, at the time, supposed every one would understand as most unequivocally opposed to the view maintained in the principal case, and which, so far as we know, has always been so received. In regard to the present question we may be allowed in self-vindication to repeat what we then said: "While it is conceded the legislature could not prohibit existing railways from carrying freight or passengers, it is believed that, beyond all question, it may so regulate these matters as to impose new obligations and restrictions upon these roads, materially affecting their profits." The learned judge in the principal case also refers to Judge COOLEY'S work on "Constitutional Limitations," and to our own work on "Railways," chap. 32, sec. 2, n. 1, where we had used this language: "Corporations, like natural persons, are subject to remedial legislation, and amenable to general laws," which we had always supposed would embrace the reasonable regulation of fares and freights to be charged by common carriers by whatever mode of transportation. We certainly should not have alluded to our own views upon this question at any former period had they not been cited in support of opinions directly in conflict with those we have always attempted to defend, and which we believe to be of vital importance to the quiet and good order of society in some of the most important business relations. Judge COOLEY'S book we had always understood and esteemed as the great bulwark in our country against the construction of the *Dartmouth College Case* in the manner it is applied in the principal case.

We must say, in all soberness, that if the doctrine of the *Dartmouth College Case* reached so far into the domain of state legislation as to exempt corporations from its control except when favorable to their wishes, which is no control at all, we should be prepared to say it never ought to have been made, and the sooner it is reversed the better. But there is, in our humble judgment, no fair pretence for giving it any such extension. By common consent it is conceded that the New Hampshire legislature had in effect repealed the charter of Dartmouth College, and substituted a new college or university in its place, and these separate institutions continued in operation until the decision was declared by the court. We cannot suppose, from the doctrines contained in the opinion in that case, that there was any purpose of exempting existing corporations from the force of general legislation, to any greater extent than natural persons are exempted.

State legislatures have no power to transfer the property of one person, natural or corporate, to another, or to deprive the owner of its beneficial use; and it is this principle which lies at the foundation of the decision in that case. The franchises of a corporation to act as such, and to pursue the business implied in its creation, are its property, as much as its goods and chattels, and it matters little whether the legislature repeal those franchises, or paralyze their use, by arbitrary and needless restrictions. It is against this kind of legislative interference that the decision in the *Dartmouth College Case* is levelled. But there is nothing in that case, which, upon any fair construction, can be understood as giving any greater immunity to corporations, from obeying general legislation in regard to their business, than natural persons have. That decision is addressed, mainly, to the point of declaring inviolate, the vital or essential franchises and functions of existing corporations; thus placing them upon the same level as natural persons pursuing the same business, under the same legislative guarantee.

The mere grant to be a corporation, and to pursue the business of a common carrier, implies nothing more than every natural person already possesses the right and power to become a common carrier. If the legislature grant the exclusive privilege of carrying on the business between certain points, whether to a corporation, or to a natural person, it becomes an irrevocable grant; but without such an express and exclusive grant, no such right can be implied in favor of a corporation, any more than of a natural person. The same is true of the right to regulate rates of toll, or fares and freights, upon the route. It must be done by the carrier, unless, and until, the state see fit to assume the control of it. But no such exclusive right of regulation will be implied, in favor of a corporation, any more than of a natural person, because there was no general law in force upon the subject, when the business was entered upon.

The implication in both cases should be against all exclusive privileges, unless shown by express grant. The corporation, like a natural person, enters upon its business subject to future legislative control. This is abundantly shown by numerous decisions of the national Supreme Court: *Charles River Bridge* v. *Warren Bridge*, 11 Pet. U. S. 420; *Richmand F. & P. Ry.* v. *Louisa Ry.*, 13 How. U. S. 71; *Turnpike Co.* v. *State*, 3 Wall. 210. The decisions of the state courts adopt the same views of course: *Boston & Lowell Ry.* v. *Salem & Lowell Ry*, 2 Gray 1; *Pontchartrain Ry.* v. *N. Orleans, Car. & Lake P. Ry.*, 11 La. Ann. 253.

We shall now, as briefly as practicable, refer to the decisions upon analogous questions where the statutes have been upheld affecting the business and interests of existing corporations. In an

opinion of the justices of the Supreme Judicial Court of Massachusetts, on the question of the validity of an act of the legislature, regulating the investments of deposits in savings banks, as to existing corporations, 12 Cush. 604, Chief Justice SHAW uses the following language: "The superintending power of the legislature applies, not only to individuals or natural persons, but with equal propriety to artificial persons, or corporations, except so far as these persons are exempted from the operation of this power, by the provisions of their charters." * * "Incidental or implied powers, upon just principles of construction, can be made to embrace, at most, only such powers as are essentially necessary to enable the corporation to accomplish the purposes of its creation." * * "No special power or privilege being given in the charter, as to the mode of conducting its business, the corporation arranged all its affairs, according to the general laws. It took its charter, subject to the general laws, and of course subject to such changes as might be rightfully made in such laws. The legislature surely did not guarantee to the corporation that there should be no change in the laws; that the whole system of legislation should remain as it was" at the date of the charter. "The corporation at the time it was incorporated, had the right and power, under the general laws, to loan money at six per cent. interest, but there can be no doubt the legislature could alter the law, so that the institution could take only four or five per cent. interest. The corporation had power under its charter to hold and dispose of property, but there was nothing in the charter, as to the mode, and of course the property could be held and disposed of only, according to the general laws, which the legislature might, at any time, alter, and the corporation would be bound by the alteration." The language of such a judge, upon a question with which he was so long familiar, ought surely to be of great weight; and it seems to us to cover the whole ground of the principal case.

The regulation of the charges, and of the mode of conducting the business of common carriers of passengers and freight, is surely one for legislative action more than most others; and especially since the construction of railways, whereby all regulation of prices, by way of competition, upon most routes, has been rendered impossible, thus making it a most overwhelming monopoly, extending to the most important and essential interests of the whole community. But there are many other cases taking the same ground in regard to the power of the legislature to regulate the business of corporations the same as that of natural persons. In *Brannin* v. *Conn. & P. Ry.*, 31 Vt. 214, the court held that a statute making the corporation liable for the wages of laborers employed upon the construction of their road, by the contractors, was valid. ALDIS, J., said: "The power of the legislature to pass all laws required by the public welfare, and to subject corporations, like natural persons, to their operation, is most unquestionable." The same principle is maintained in *Peters* v. *St. Louis Iron Mountain Ry.*, 23 Mo. 107. And the general proposition that corporations are as much subject to the general laws of the state, regulating their business, as natural persons engaged in the same business, unless specially exempted by charter, is declared in numerous other cases: *State* v. *Noyes*, 47 Me. 189; *Galena & Chicago Ry.* v. *Loomis*, 13 Ill. 548; *Commercial Bank of Manchester* v. *Nolan*, 7 How. (Miss.) 508; *Grand Gulf Bank* v. *Archer*, 8 Sm. & M. 151. A statute forbidding bequests to corporations is valid, as to existing corporations: *Ayres* v. *Methodist Episcopal Ch.*, 3 Sanf. 351. So a general statute making railway companies responsible for all losses

caused by fires communicated by their engines, without regard to the question of negligence, was held valid, as to existing companies: *Lyman* v. *Boston & Worc. Ry.*, 4 Cush. 288; *J. P. Norris* v. *Androscoggin Ry.*, 39 Me. 273. So too of laws requiring railways to fence their roads: *Gorman* v. *Pacific Ry.*, 26 Mo. 441; *Nelson* v. *Vt. & Canada Ry.*, 26 Vt. 717. The decisions of the state courts, where general laws imposing new burdens upon or restricting the mode of exercising existing powers by corporations have been upheld, are very numerous, and almost all one way.

But it seems to be supposed that fare and freight to a railway company is something specially sacred, as if it were more vital to the corporation than interest to a bank, or the right of natural persons to conduct their business in their own way, freed from all future legislative control. But the right of taking fare and freight, by railway companies, is not in any instance an arbitrary and unlimited right or power. At common law its exercise is required to be reasonable and just, and in proportion to the service, "and not to exact what he will:" LAWRENCE, J., in *Harris* v. *Packwood*, 3 Taunt. 264; *New England Express Co.* v. *Maine Cent. Ry.*, 57 Me. 188; s. c., 9 Am. Law Reg. N. S. 728 and notes: *McDuffee* v. *P. & R. Ry.*, 52 N. H. 430, and cases cited in opinion. The chartering of a railway to become a common carrier clearly implies nothing more than that it may do as other common carriers are allowed by law to do, take reasonable compensation for its service. The idea that such a company is so far above the control of the legislature that it will not be bound by a general law applicable to all common carriers or to all railways, intending to establish uniform rates of charge to all who employ them, seems to us to admit of no fair argument in its support, either from principle or authority.

In saying this we disclaim all purpose of intimating any doubt in regard to the fairness of the argument of the court in favor of the conclusion to which they came, since none is attempted by them. It seems to be assumed by the court, as an axiomatic proposition, that if an act denying the company all compensation for their services could be void, under the United States Constitution, which no one will deny, it must be equally beyond the power of the legislature to pass an act in any way interfering with the entire freedom of the company, to demand and receive fare and freight, without limit or restraint, except from their own sense of justice or policy. This is what the language we have extracted from the opinion, in terms declares. We trust we have sufficiently pointed out the difference between the regulation and the denial of fare and freight, as to existing carriers, whether natural or corporate persons.

The United States Supreme Court, whose decisions are final upon this question, does not seem to have made any expressly upon the particular point in question; but there are some bearing upon it, more or less, to which we will briefly refer. In *Bank of Columbia* v. *Okely*, 4 Wheaton 235, it was held that a special provision in a state bank charter, giving the corporation a summary process against its debtors, is no part of its corporate franchises, and may be repealed at the will of the legislature. So too in *Providence Bank* v. *Boslings*, 4 Pet. U. S. 514, it was held that a state law, taxing the capital stock of a bank, does not impair the obligation of the contract, arising from its charter, which contains no stipulation on the subject of taxation. So too the legislature of the state, having authorized a turnpike company to raise money by a lottery, a subsequent act, limiting the time for the exercise of such authority, is valid: *Phalen* v. *Virginia*, 8 How. U. S. 163.

The decisions of this court are almost uniform in favor of the views for which we contend. The only decision which gives the slightest color to the doctrine of the principal case is that of *The Binghamton Bridge*, 3 Wall. 51, where three of the judges dissented; and the implications which some have thought to be necessary results of that decision, viz.: that corporations took exclusive rights and privileges, above the control of the legislature, without express grant or clear implication, have not been maintained in the subsequent decisions of the court: *Turnpike Co.* v. *State of Maryland*, 3 Wall. 210.

We have thus attempted to present fairly and fully what we regard as the true rule upon this vital question of constitutional law. We have no purpose of impugning either the wisdom or learning of the court making the decision in the principal case. We accord them the highest measure of both, as every one must who remembers the high standing of that court for the last half century. And we cannot disguise to ourselves, and have no wish to evade or suppress the admission of the existence of a very extensive public opinion, possibly to some extent among the profession, if not among judges, both state and national, without much reflection or examination, that the *Dartmouth College Case* really does justify some such doctrine as that contained in the principal case. This view is somewhat purposely countenanced often, it is feared, by two classes of people: 1. Those who feel no respect for any doctrine of law whereby vested rights are held inviolate, and who consequently desire to bring all such rules of law, as far as practicable, into public disrespect and contempt, which, in a free country, largely governed by popular impulses and opinions, is in no way more successfully promoted than by pushing all such doctrines to the greatest extreme, so as to defeat their force and operation, as far as possible, by the *reductio ad absurdum*. 2. There are a very numerous and influential class of people, the controllers of vast amounts of capital, variously invested in associate and corporate stocks, who, in all good faith and soberness, use every means in their power to convince themselves and others that capital demands the inviolable protection of all the powers both of legislation and of judicial administration, and that to this end it is desirable to maintain the doctrine that corporations, when once chartered, are above the control of all legislation, except such as may be solicited by such corporations for their own advantage. But we trust we have shown that neither class obtain any countenance from the doctrines of the *Dartmouth College Case*, when properly understood. No one can honestly believe, we think, that if the New Hampshire legislature had only passed a general law, requiring all colleges and private schools to charge uniform rates of tuition to all students in the same classes, that the act would have been held void. But that is all which the statute involved in the principal case attempted.

I. F. R.